UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

TRIPLE CANOPY, INC. AND
NORTH AMERICAN SECURITY, INC.,
AS JOINT EMLOYERS
Employer

and

NATIONAL ASSOCIATION OF SPECIAL POLICE AND SECURITY OFFICERS (NASPSO)
Petitioner

Case 05-RC-146723

and

INTERNATIONAL UNION, SECURITY, POLICE AND FIRE PROFESSIONALS OF AMERICA (SPFPA)
Intervenor

and

UNION RIGHTS FOR SECURITY OFFICERS (URSO)
Intervenor

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act ("the Act"), as amended, a hearing was held on March 9, 2015 before a hearing officer of the National Labor Relations Board ("the Board"). The Petitioner, National Association of Security Police and Security Officers ("NASPSO"), and the Intervenor, International Union, Security, Police, and Fire Professionals of America ("SPFPA"), appeared at the hearing, along with one of the two entities identified as the Joint Employer, North American Security, Inc. ("NAS"). The other entity identified as the Joint Employer, Triple Canopy, Inc. ("Triple Canopy") did not appear at

the hearing,[1] nor did the Incumbent Union (which also intervened), Union Rights for Security Officers ("URSO"). The record indicates Triple Canopy and URSO were each timely served with a copy of the petition and Notice of Representation Hearing. All parties present at the hearing waived the right to file a brief.

On February 20, 2015, NASPSO filed the petition seeking to represent a unit of "all full-time and regular part-time armed and unarmed security officers employed by the Joint Employers Triple Canopy and NAS at the Defense Intelligence Agency located in Bethesda, MD and excluding all office clerical employees, professional employees, and supervisors as defined by the Act." The petition asserts that there are approximately forty-five employees in the proposed unit.

The parties stipulated, and I find, that NASPSO, URSO, and SPFPA is each a labor organization within the meaning of Section 2(5) of the Act, that the Joint Employers,[2] Triple Canopy[3] and NAS,[4] are each an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that each employer is therefore subject to the jurisdiction of the Board. NASPSO requested recognition and it was denied by the Employer.

[1] Although it did not appear at the hearing, Triple Canopy entered into certain stipulations, found at Board Exhibit 2, regarding labor organization status, commerce facts, the fact that it is a joint employer with NAS, and that the joint employer is subject to the jurisdiction of the Board.

[2] The parties presented little testimony or stipulation regarding the factual underpinnings to establish joint employer status. However, the documentary evidence indicates joint employer status, NAS—the prime contractor—admitted at the hearing that it is a joint employer with Triple Canopy (its subcontractor), and both NAS and Triple Canopy stipulated in writing that they are a joint employer.

[3] The parties stipulated, and I find, that at all material times, Triple Canopy has been a corporation with an office and a place of business in Reston, Virginia, and is engaged in the business of providing security guard services to the Department of Defense, including the Defense Intelligence Agency located in Bethesda, MD, the only facility involved herein. In conducting its operations during a 12-month period ending on February 28, 2015, Triple Canopy provided security guard services to the United States valued in excess of $50,000. Based on its operations described above, Triple Canopy has a substantial impact on the national defense of the United States.

[4] The parties stipulated, and I find, that at all material times NAS has been a corporation with an office and a place of business in Carson, California, and is engaged in the business of providing security guard services to the Department of Defense at facilities located throughout the United States, including the Defense Intelligence Agency located in Bethesda, MD, the only facility involved herein. In conducting its operations during a 12-month period ending on February 28, 2015, NAS performed services valued in excess of $50,000 in states other than the State of Maryland.

I. ISSUES, POSITIONS OF PARTIES, AND DETERMINATION

The issue in this case is whether one of the Board's administrative bars to processing a petition—either contract bar or successor bar—should prevent the processing of the petition.

No party at the hearing asserted that the petition should be dismissed by operation of either the successor bar or the contract bar. At the hearing, the hearing officer raised the issue of whether the petition should be dismissed by operation of either the successor bar or the contract bar. The Petitioner and SPFPA each claim that the contract between URSO and the Joint Employers terminated by its terms when it expired on February 12, 2015. SPFPA further claims that insufficient evidence was adduced at the hearing to support that the contract bar or successor bar doctrine applies. NAS offered no position regarding these issues.

Based on the record as a whole, and careful consideration of the arguments of the parties at the hearing, I find that there is no contract bar or successor bar, and I direct that an election be held for the petitioned-for bargaining unit.

II. FACTS

On October 26, 2012, URSO and a predecessor employer, Jenkins Security Consultants ("JSC"), entered into a collective-bargaining agreement, with effective dates October 26, 2012 to February 12, 2015 (Bd. Exh. 3). According to the terms of that collective-bargaining agreement, JSC recognized URSO as the exclusive collective-bargaining representative for all full-time and regular part-time security guards, as defined in Section 9(b)(3) of the Act, as amended, assigned by JSC to the Defense Intelligence Agency building in Bethesda, Maryland, excluding all office

clerical employees, professional employees, project managers, assistant project managers, captains, lieutenants, and all other supervisory employees of JSC.

Although there is no testimony in the record to clarify the issue, it appears that JSC lost the contract to provide security guard services at the Defense Intelligence Agency building in Bethesda at some point in 2013. The record includes a document, titled "Bridge Agreement," effective from August 1, 2013 to February 2, 2015 (Bd. Exh. 5). By its terms, URSO and another entity, Applied Integrated Technologies (AIT), agreed to adopt the terms and conditions contained in URSO's collective-bargaining agreement with JSC, with certain specific modifications. Among other subjects listed in the Bridge Agreement (e.g., health and welfare allowance), URSO and AIT agreed that officers would receive a wage rate of $22.00/hr, effective February 13, 2013.

The record does not reflect what transpired after the Bridge Agreement was executed, but, presumably, the employer providing security guard services at the Defense Intelligence Agency in Bethesda changed again in 2014. Briana Neville, the sole witness at the hearing and NAS' administrative manager for its contract with the Defense Intelligence Agency, estimated that NAS was awarded the contract in October 2014, but she was not certain; she knew that NAS took over the service contract on November 16. Although there was no testimony introduced on the record on the subject, NAS, Triple Canopy, and URSO subsequently executed a document titled, "Assumption Agreement & Amendment," effective November 16, 2014 (Bd. Exh. 4). According to the terms of that document, NAS and Triple Canopy expressly assumed "the rights, remedies and obligations of [JSC] pursuant to that certain Collective Bargaining Agreement effective October 26, 2012 by and between URSO and JSC." *Id.* In doing so, NAS, Triple Canopy, and URSO agreed to modify the schedule for when employees were paid. Neville

indicated that she did not have any knowledge regarding the bargaining history, nor was she involved in any bargaining. She testified, however, that she understood that the contract expired on February 12, 2015.

Finally, the record includes a document which appears to be contractual in nature and similar to the Bridge Agreement described above between URSO and AIT. The document, marked as Board Exhibit 6, is similarly titled "Bridge Agreement." Notably, Neville could not authenticate the document. In fact, Neville testified that she had never seen the document before, and had never been informed of its existence. By its terms, Board Exhibit 6 purports to be a memorialization from NAS, Triple Canopy, and URSO that those parties adopted the terms and conditions set forth in the collective-bargaining agreement between JSC and URSO for the Defense Intelligence Agency jobsite. Also, Board Exhibit 6 purports to extend the Assumption Agreement (Bd. Exh. 4) until September 30, 2015. Similar to Board Exhibit 5, Board Exhibit 6 listed a series of subjects regarding employees' terms and conditions of employment (e.g., health and welfare allowance; retirement allowance; uniform allowance; sick leave; holiday pay). In addition, Board Exhibit 6 states that, "[t]his Bridge Agreement between Jenkins and URSO provides that officers receive an hourly wage rate of $21.50, effective 02/13/13."[5] The document purports to be signed by NAS and URSO on January 15, 2015; although a signature block appears for a Triple Canopy representative, Michael Weixel, he did not sign the document.[6]

[5] Neville testified that NAS has been paying officers $21.50/hr since it took over the operations, and that NAS just continued to pay the employees the same pay rate as their predecessor. Neville handles payroll for NAS, but she does not alter any pay rates—she inputs employees' reported work hours from their schedules and then processes their paychecks.

[6] Weixel signed the Assumption Agreement (Bd. Exh. 4).

III. ANALYSIS

As I indicated above, none of the parties asserted that I should dismiss the petition by operation of the successor bar. The hearing officer raised the issue, and I find it to be inapplicable here. In *UGL-UNICCO Service Co.*, 357 NLRB No. 76 (2011), the Board re-established the "successor bar" doctrine, holding that an incumbent union must be afforded a reasonable period of time for bargaining, without challenge to its representative status. Going further, the Board defined a "reasonable period of bargaining" for two different types of situations, based on whether the successor employer elected to establish new terms and conditions of employment, or whether the successor employer instead "has expressly adopted existing terms and conditions of employment as the starting point for bargaining without making unilateral changes." *Id.* at slip op. 9. If the successor employer adopts the terms and conditions of the existing contract as a starting point for bargaining, a "reasonable period of bargaining" is six months, measured from the date of the first bargaining meeting between the union and the successor employer. *Id.* If the successor employer unilaterally establishes terms and conditions of employment before commencing bargaining, then the "reasonable period of bargaining" will be a minimum of six months and a maximum of one year, again measured from the date that bargaining begins. *Id.* Yet in announcing the re-establishment of the successor bar, the Board made clear that it was to apply in situations where the successor employer has abided by its obligation to recognize the incumbent union, but where the contract bar did not apply, either because there was no contract between the incumbent union and the successor employer, or because that contract was insufficient for purposes of contact bar. *Id.* at slip op. 8. As examples of contracts that would be considered insufficient for purposes of contract bar, the Board pointed

to a contract of less than 90 days, or an interim agreement that was intended to be superseded by a permanent agreement. *Id.* at slip op. 8, n. 27.

Analyzing whether this petition should be dismissed by operation of the successor bar, I am very mindful that neither URSO, NAS, nor Triple Canopy contends that the petition should be dismissed, or introduced sufficient evidence for me to reach that conclusion. Furthermore, on what limited record evidence exists, I find that the successor bar should not apply to bar the instant petition, because the facts here do not fall within the scope in which the Board, in *UGL-UNICCO,* indicated that the successor bar would apply. As discussed above, the Board states that the successor bar doctrine would apply in successorship situation where the contract bar was inapplicable, either because: (1) the successor had not adopted its predecessor's collective-bargaining agreement with the incumbent union; or (2) because an existing agreement between the successor and the incumbent union was somehow insufficient under the contract bar doctrine. I find the first of these situations does not exist in this case. The successor employer not only adopted the terms of a pre-existing collective-bargaining agreement that URSO was a party to, but also bargained and reached agreement with URSO about the express assumption of that collective-bargaining agreement with a material change to the schedule of payments to employees. That agreement is written, it was signed by URSO, NAS, and Triple Canopy, and it contains a clear expiration date of February 12, 2015. Furthermore, it contains substantial terms and conditions of employment; it explicitly assumes and amends the collective-bargaining agreement between URSO and JSC covering the same bargaining unit at issue in this case. In short, the agreement between URSO, NAS, and Triple Canopy titled "Assumption Agreement & Amendment" meets the basic requirements for a contract. *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958). Due to the undisputed fact that the parties had entered into a contract, I find

that the first situation identified in *UGL-UNICCO* in which the successor bar would be applied is inapplicable to this particular case.

As for the second situation, where an existing agreement is insufficient to establish contact bar, I similarly find there to be insufficient record evidence. Beginning with the "Assumption Agreement & Amendment" itself, I stress that it has already expired. That contract, effective from November 16, 2014, expressly assumed (and amended) the collective-bargaining agreement between URSO and JSC, which was effective from October 26, 2012 to February 12, 2015. Furthermore, the "Assumption Agreement & Amendment" explicitly indicated that the URSO-JSC collective-bargaining agreement was attached as "Exhibit A" to the URSO-NAS/Triple Canopy contract. Additionally, the URSO-NAS/Triple Canopy contract does not meet either of the examples identified by the Board as agreements which would not serve as a bar under existing rules. The URSO-NAS/Triple Canopy contract is not one which is insufficient to serve as a bar because its duration was too limited. Although its 88-day period was less than the 90 days the Board typically finds as insufficient for a contract to serve as a bar to a petition, I find this situation to be inapplicable because the URSO-NAS/Triple Canopy contract had, by its express incorporated terms, already expired on February 12—before NASPSO filed the instant petition on February 20. As for the second example identified by the Board, that of an interim agreement intended to be superseded by a permanent agreement, I find there is nothing in the express terms of the URSO-NAS/Triple Canopy contract by which I could conclude the parties intended to bargain about any further. Likewise, I stress that there is nothing in the record testimony indicating that the URSO-NAS/Triple Canopy contract was intended by either parties to be an interim agreement to be superseded, or that there was any

further bargaining contemplated or ongoing. Accordingly, I find that the record evidence is insufficient for me to dismiss this petition by operation of the successor bar.

As to the issue of contract bar, I also find it to be inapplicable here. The contract bar doctrine prevents the consideration of a petition during the term of an existing collective-bargaining agreement that is three years or less, unless the petition is filed within an "open period" of 60-90 days before the contract's expiration. *Hexton Furniture Co.*, 111 NLRB 342 (1955); *Gen. Cable Corp.*, 139 NLRB 1123, 1125 (1962); *Leonard Wholesale Meats, Inc.*, 136 NLRB 1000, 1001 (1962).

As discussed above, I find that the document titled "Assumption Agreement & Amendment," which I have referred to as the URSO-NAS/Triple Canopy contract, to be a contract that, by its terms, expired on February 12, 2015. Furthermore, Neville, NAS' administrative manager for its contract covering the security guard services at the Defense Intelligence Agency building in Bethesda, testified that she was of the mind that the collective-bargaining agreement had expired on February 12, 2015. The burden of proving that a contract is a bar to the processing of a petition is on the party asserting the existence of a contract. *Roosevelt Memorial Park,* 187 NLRB 517, 518 (1970). Again, I stress that no party to this proceeding asserted a contract bar or produced evidence to that effect. While a document was received into evidence as Board Exhibit 6, no witness authenticated the document, the parties did not stipulate to its authenticity, and the lone witness' testimony regarding that document was that she had never seen it before.[7] Thus, I view the document admitted into the record as Board Exhibit 6 as insufficient in order to establish an existing collective-bargaining agreement that could serve as a bar to the processing of the instant petition. As this petition was filed on

[7] I note that Board Exhibit 6 was not signed by Michael Weixel, Triple Canopy's Senior Director of Contracts, or any other representative from Triple Canopy.

February 20, 2015, subsequent to the expiration of the URSO-NAS/Triple Canopy contract on February 12, 2015, I find that the petition was timely filed.

Accordingly, I am directing an election for the employees for the petitioned-for unit. No party has asserted that the petitioned-for unit is inappropriate, this unit has been covered by prior collective-bargaining agreements, and I find the unit to be an appropriate unit for collective bargaining.

IV. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer Triple Canopy Inc. has been a corporation with an office and a place of business in Reston, Virginia, and is engaged in the business of providing security guard services to the Department of Defense, including the Defense Intelligence Agency located in Bethesda, MD, the only facility involved herein. In conducting its operations during a 12-month period ending on February 28, 2015, Triple Canopy Inc. provided security guard services to the United States valued in excess of $50,000. Based on its operations described above, Triple Canopy Inc. has a substantial impact on the national defense of the United States.

3. The Employer North American Security, Inc. has been a corporation with an office and a place of business in Carson, California, and is engaged in the business of providing security guard services to the Department of Defense at facilities located throughout the United

States, including the Defense Intelligence Agency located in Bethesda, MD, the only facility involved herein. In conducting its operations during a 12-month period ending on February 28, 2015, NAS performed services valued in excess of $50,000 in states other than the State of Maryland.

4. At all material times, North American Security, Inc. has possessed control over the labor relations policy of Triple Canopy Inc., and administered a common labor policy with Triple Canopy Inc. for the employees of North American Security, Inc. and Triple Canopy Inc., herein the Joint Employer.

5. At all material times, North American Security, Inc. and Triple Canopy Inc. have been joint employers of the employees of the Joint Employer

6. The Joint Employer is an employer as defined in Section 2(2) of the Act and is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

7. National Association of Special Police and Security Officers (NASPSO) is a labor organization as defined in Section 2(5) of the Act.

8. International Union, Security, Fire and Police Professionals of America (SPFPA) is a labor organization as defined in Section 2(5) of the Act.

9. Union Rights for Security Officers (URSO) is a labor organization as defined in Section 2(5) of the Act.

10. A question affecting commerce exists concerning the representation of certain employees of the Joint Employer within the meaning of Section 2(6) and (7) of the Act.

11. I find the following employees of the Employer constitute a unit appropriate for the purpose of collective-bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time armed and unarmed security officers employed by the Joint Employers North American Security, Inc. and Triple Canopy Inc. at the Defense Intelligence Agency located in Bethesda, MD and excluding all office clerical employees, professional employees, and supervisors as defined by the Act.

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by National Association of Special Police and Security Officers (NASPSO), International Union, Security, Police and Fire Professionals of America (SPFPA), Union Rights for Security Officers (URSO), or none. The date, time, and manner of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strikes, who have retained their status as strikers but who have been permanently replaced, as well as

their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election. To be timely filed, the list must be received in the Regional Office, National Labor Relations Board, Region 5, Bank of America Center -Tower II, 100 South Charles Street, Suite 600, Baltimore, Maryland 21201, on or before April 1, 2015. No extension of time to file this

list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (410) 962-2198. Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

Consistent with the Agency's E-Government initiative, parties are encouraged to file an eligibility list electronically. If the eligibility list is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Filing an eligibility list electronically may be accomplished by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the eligibility list rests exclusively with the sender. A failure to timely file the eligibility list will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed.

Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so stops employers from filing objections based on non-posting of the election notice.

RIGHT TO REQUEST REVIEW

Right to Request Review: Pursuant to the provisions of Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may obtain review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001. This request for review must contain a complete statement setting forth the facts and reasons on which it is based.

Procedures for Filing a Request for Review: Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by close of business on April 8, 2015, at 5:00 p.m. (ET), unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically.** If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.[8] A copy of the request for review must be served on each of

[8]A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional

the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

(SEAL)

Dated: March 25, 2015

/s/ Charles L. Posner

Charles L. Posner, Regional Director
National Labor Relations Board, Region 5
Bank of America Center -Tower II
100 South Charles Street, Suite 600
Baltimore, Maryland 21201

Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.